

LEGISLATIVE RESEARCH COMMISSION

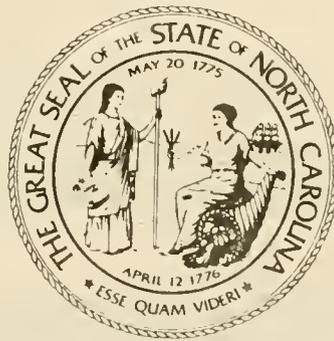
ITINERANT MERCHANTS



REPORT TO THE
1987 GENERAL ASSEMBLY
OF NORTH CAROLINA

LEGISLATIVE RESEARCH COMMISSION

ITINERANT MERCHANTS



REPORT TO THE
1987 GENERAL ASSEMBLY
OF NORTH CAROLINA

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TABLE OF CONTENTS

	<u>Page</u>
Letter of Transmittal.....	1
Legislative Research Commission Membership List.....	2
Preface.....	3
Committee Proceedings.....	6
Legislative Proposals.....	10
1. AN ACT TO CLARIFY THE PRIVILEGE LICENSE TAX ON PEDDLERS, ITINERANT MERCHANTS, AND FLEA MARKET OPERATORS.....	11
2. AN ACT REGULATING ITINERANT MERCHANTS.....	18
Appendices	
A. Authorizing Legislation	
Chapter 790.....	A-1
House Joint Resolution 1170.....	A-4
B. Itinerant Merchants Study Committee Membership and Staff.....	B-1
C. Memo Explaining Current Law.....	C-1
D. Speakers at Committee Meetings.....	D-1

STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



December 12, 1986

TO THE MEMBERS OF THE 1987 GENERAL ASSEMBLY:

The Legislative Research Commission submits to you for your consideration its final report on the regulation of itinerant merchants. This report was prepared by the Legislative Research Commission's Itinerant Merchants Study Committee pursuant to Chapter 790 of the 1985 Session Laws.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "J. J. Harrington", written over a horizontal line.

J. J. Harrington

A handwritten signature in cursive script, appearing to read "Liston B. Ramsey", written over a horizontal line.

Liston B. Ramsey

Cochairmen

Legislative Research Commission

1985 - 87

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

House Speaker Liston B. Ramsey, Cochairman	Senate President Pro Tempore J. J. Harrington, Cochairman
Representative Chris S. Barker, Jr.	Senator Henson Barnes
Representative John Church	Senator A. D. Guy
Representative Bruce Ethridge	Senator Ollie Harris
Representative Aaron Fussell	Senator Lura Tally
Representative Barney P. Woodard	Senator Robert Warren

PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has ten additional members, five appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly or either house thereof, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

Chapter 790 of the 1985 Session Laws authorizes the Legislative Research Commission to study various topics. The Commission undertook studies of many of the topics listed in that Chapter and grouped those studies into ten broad categories. The Commission assigned each of its members the responsibility for supervising the studies in one of these categories. Committees consisting of members of the General Assembly and the public were appointed by the Commission cochairmen pursuant to G.S. 120-30.10(b) and (c) to make these studies. Cochairmen, one from each house of the General Assembly, were designated for each committee.

The study of the laws concerning the regulation of itinerant merchants is one of the studies authorized by Chapter 790 of the 1985 Session Laws. Section 1, subdivision (12) of that Chapter authorizes the Legislative Research Commission to study the regulation of itinerant merchants. Because Chapter 790 is a compilation of many joint resolutions and bills authorizing the Legislative Research Commission to study a particular topic and simply lists the topics that may be studied, Section 1 of that Chapter authorizes the Commission to consider the original bill or resolution proposing a particular study in determining the scope of the study. House Joint Resolution 1170, introduced by Representative Martin Lancaster in the 1985 Session, is the originating legislation for the study of the regulation of itinerant merchants. That resolution states that the "Commission may study the regulation of itinerant merchants to determine whether the current laws regulating these merchants are adequate to ensure the proper collection of taxes payable by these merchants and to protect consumers who purchase goods from these merchants." It also suggests that, as part of its study, the Commission consider whether itinerant merchants "should be required to post a bond to cover potential tax liabilities and to provide recourse to consumers who have causes of action against the merchants." Chapter 790 and House Joint Resolution 1170 are attached as Appendix A.

The Legislative Research Commission grouped the study of itinerant merchants in the category "Local Government" under the direction of Representative John Church. The cochairmen of the

Itinerant Merchants Study Committee established by the Research Commission are Senator James E. Ezzell, Jr., and Representative Charles M. Beall. The full membership of the study committee and the staff assigned to the committee is listed in Appendix B of this report. A copy of this report is filed in the Legislative Library. A committee notebook containing the committee minutes and all information presented to the committee is also filed in the Legislative Library.

COMMITTEE PROCEEDINGS

The Legislative Research Commission's Itinerant Merchants Study Committee met two times. Both of these meetings were held after the 1986 Session of the General Assembly.

At its first meeting, held on October 22, 1986, the Itinerant Merchants Study Committee identified those merchants considered to be "itinerant merchants," examined the current law concerning itinerant merchants, and heard presentations from numerous retail merchants who have fixed retail establishments concerning the problems created by itinerant merchants. For purposes of the committee's study, an "itinerant merchant" was defined as a merchant who does not have a fixed retail store and who sells goods by peddling the goods from place to place or by transporting the goods to a temporary location and selling the goods at that location. Included in this group are persons who sell goods at flea markets and persons who sell goods, such as furniture, at a location for a limited period of time.

After determining what an itinerant merchant is, the committee reviewed the current law regulating these merchants. The committee learned that, under current law, the regulation of itinerant merchants is left to local laws enacted by ordinances adopted under G.S. 153A-125 or 160A-178. These statutes give counties and cities, respectively, broad authority to "regulate, restrict or prohibit" the business activities of itinerant merchants. Pursuant to these statutes, some cities, like Selma,

require itinerant merchants to register with the city before doing business in the city and to furnish the city a \$1,000 bond conditioned on compliance with the city ordinances and State statutes. Although several State statutes apply to itinerant merchants, these statutes do not regulate these merchants or apply only to itinerant merchants. Like many other persons engaged in business, itinerant merchants must pay an annual State privilege license tax, collect and remit sales and use taxes, refrain from advertising their goods in a deceptive manner and from other unfair trade practices, and comply with the "three-day" rejection period for off-premises sales of goods. The State statutes affecting itinerant merchants are discussed more fully in Appendix C.

With the current law on itinerant merchants in mind, the committee listened to a group of retail merchants with fixed retail establishments voice their concerns over itinerant merchants. The names of the retailers who addressed the committee, and all other persons who addressed the committee, are listed in Appendix D. The retailers stated that itinerant merchants frequently do not pay whatever taxes they are required by law to pay and, more importantly, frequently sell misrepresented goods or defective goods to consumers. Because the consumer does not know where or how to get in touch with an itinerant merchant, the consumer who purchases misrepresented or defective goods from an itinerant merchant has no recourse. The retailers also pointed out that itinerant merchants sometimes

sell stolen goods, counterfeit goods, and goods not intended for resale such as demonstration tapes.

To remedy the problems perceived by these retailers, the North Carolina Retail Merchants Association suggested that the committee adopt a proposal requiring itinerant merchants to register in a county before doing business in that county, pay a \$50.00 registration fee, provide proof of purchase for goods offered for sale by them, and give a \$1,000 bond to ensure payment of fees and taxes and to provide financial recourse for consumers who have purchased misrepresented or defective merchandise.

After hearing from the retailers, the committee heard from two itinerant merchants. These merchants stressed that they, like the other itinerant merchants they know, are law-abiding taxpayers who do not misrepresent the goods they sell or sell defective products. They stated that the current law adequately regulates itinerant merchants and that any problems with the current law could be solved by enforcing the existing law and not by enacting new laws. They noted that cities and counties have the authority to pass ordinances regulating itinerant merchants if the city or county has a particular problem with these merchants. Finally, they expressed the hope that the committee not regulate legitimate businessmen like themselves out of business by imposing bond requirements and other requirements they realistically can not meet and stay in business.

At the committee's second meeting, held on November 10, 1986, the committee considered two drafts of proposed legislation

and entertained comments on these drafts from the North Carolina Retail Merchants Association, several retailers, numerous itinerant merchants, the Department of Revenue, and the Consumer Protection Division of the Attorney General's Office. First, the committee considered a proposed bill to rewrite G.S. 105-53, the statute that imposes a privilege license tax on itinerant merchants. After numerous questions on exactly who is and is not covered by G.S. 105-53, the committee adopted the bill to rewrite that statute as Legislative Proposal 1.

Next, the committee considered a draft bill imposing new requirements on itinerant merchants. The draft bill considered by the committee was a modified version of the request of the North Carolina Retail Merchants Association. As requested by that Association, the draft required itinerant merchants to register in each county before selling goods in that county and furnish a \$1,000 bond. Unlike the Association's request, the draft imposed a registration fee of \$10.00 instead of \$50.00, exempted persons who sell at trade shows and a few other sellers, and required an itinerant merchant to show invoices or receipts evidencing the source of his goods only if requested by the law-enforcement officer registering the merchant.

The committee discussed the regulatory draft at length, deleting the requirement to furnish a bond and modifying some of the other provisions. After considering the comments on the draft made by all interested parties, the committee adopted the draft, as changed by it, as Legislative Proposal 2.

LEGISLATIVE PROPOSALS

The Itinerant Merchants Study Committee recommends the following two bills to the 1987 General Assembly. Each bill is followed by an explanation of the bill.

Proposal 1 rewrites the existing statute that imposes a privilege license tax on itinerant merchants; it does not change the current law as it is applied. The committee recommends that the privilege license tax statute be rewritten because the statute is hard to understand and contains contradictory, archaic, and unconstitutional provisions.

Proposal 2 contains the regulatory recommendations of the committee. Unlike Proposal 1, Proposal 2 changes the current law by imposing new requirements on itinerant merchants. These changes are discussed fully in the explanation to that proposal. Although the committee found that enforcement of the current law would solve many of the complaints retailers voiced about itinerant merchants, the committee decided that minimal State regulation of itinerant merchants is needed to ensure better enforcement of the existing laws and to provide a uniform system of regulation throughout the State.

LEGISLATIVE PROPOSAL 1

A BILL TO BE ENTITLED
AN ACT TO CLARIFY THE PRIVILEGE LICENSE TAX ON PEDDLERS,
ITINERANT MERCHANTS, AND FLEA MARKET OPERATORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-53 is rewritten to read:

"§ 105-53. Peddlers, itinerant merchants, and flea market operators.--(a) Peddler. Every person engaged in business or employed as a peddler shall obtain a license from the Secretary of Revenue for the privilege of peddling goods and shall pay a tax for the license in the amount specified in this section. A "peddler" is a person who travels from place to place with an inventory of goods, who sells the goods at retail or offers the goods for sale at retail, and who delivers the identical goods he carries with him. A peddler of only farm products shall pay a tax of twenty-five dollars (\$25.00) regardless of the number of counties in which he peddles goods. A peddler who travels from place to place on foot, selling goods other than or in addition to farm products, shall pay a tax of ten dollars (\$10.00) for each county in which he peddles goods. A peddler who travels from place to place by vehicle, selling goods other than or in addition to farm products, shall pay a tax of twenty-five dollars (\$25.00) for each county in which he peddles goods.

(b) Itinerant Merchant. Every person engaged in business as an itinerant merchant shall obtain a license from the

Secretary of Revenue for the privilege of engaging in business and shall pay a tax for the license of one hundred dollars (\$100.00) for each county in which he is engaged in business. An "itinerant merchant" is a merchant, other than a merchant with an established retail store in the county, who transports an inventory of goods to a building, vacant lot, or other location in a county and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at a retail. An itinerant merchant is not required to purchase a license under this subsection to sell goods or offer goods for sale at a flea market for which the operator has obtained a license under subsection (c). A merchant who sells goods, other than farm products, in a county for less than six consecutive months is considered an itinerant merchant unless he stopped selling goods in that county because of his death or disablement, the insolvency of his business, or destruction of his inventory by fire or other catastrophe.

(c) Flea Market Operator. Every person engaged in business as a flea market operator shall obtain a license from the Secretary of Revenue for the privilege of engaging in business and shall pay a tax for the license of one hundred dollars (\$100.00) for each county in which he is engaged in business. A "flea market operator" is a person who rents space, at a location other than a permanent retail store, to others for the purpose of selling goods at retail or offering goods for sale at retail.

(d) Exemptions. This section does not apply to the following:

- (1) Sales of farm products raised on premises owned or occupied by the seller of the products;
- (2) Sales of printed material, wood for fuel, ice, seafood, meat, poultry, livestock, eggs, dairy products, bread, cakes, or pies;
- (3) Sales of goods made by the seller of the goods; and
- (4) Sales by a person who maintains a fixed, permanent location from which he makes at least ninety percent (90%) of his sales, but who sells some goods in the county of his fixed location by peddling the goods.

(e) Person Defined. As used in this section, "person" has the same meaning as in G.S. 105-164.3(11).

(f) Local License. Counties and cities may levy a license tax on a business taxed under this section in an amount that does not exceed the State tax."

Sec. 2. Chapters 632 and 923 of the 1955 Session Laws are repealed.

Sec. 3. This act shall become effective July 1, 1987.

EXPLANATION OF LEGISLATIVE PROPOSAL 1

Legislative Proposal 1 rewrites G.S. 105-53, the statute that imposes a privilege license tax on peddlers, itinerant merchants, and flea market operators, to make the statute more understandable. Although the text of the proposal differs significantly from the text of G.S. 105-53, the proposal does not change G.S. 105-53 as it is applied. In general, the proposal reorganizes G.S. 105-53 to group the provisions concerning the three types of merchants covered by the statute into three separate subsections. In reorganizing the statute, the proposal modernizes the wording of the statute and deletes provisions of the statute that are archaic, unconstitutional, contradictory, or duplicative.

As stated, the proposal preserves the distinction made in the present statute between peddlers, itinerant merchants, and flea market operators. Although the term "itinerant merchant" is frequently used to include a peddler and a flea market operator, the term as used in G.S. 105-53 has a narrower meaning. Under G.S. 105-53 a peddler is a person who travels from place to place selling goods he carries with him; whereas, an itinerant merchant is a person who transports an inventory of goods to a temporary location, such as a hotel room or a vacant lot, and sells the goods at that location. A flea market operator, on the other hand, is a person who rents space to others at a location other

than a permanent retail store for the purpose of selling goods at retail.

The most obvious differences in wording between the current statute and the proposal occur in the provisions concerning peddlers. The proposal gathers the provisions on peddlers in subsection (a), deletes the tax table for peddlers, and resolves the conflict over the amount of tax applicable to a person who peddles farm products. The proposal deletes the tax table for peddlers because, when the obsolete and unconstitutional parts of the table are omitted, only two rates remain---one applicable to a peddler on foot and one applicable to a peddler who uses a vehicle. The proposal carries forward the tax rates applicable to these two remaining categories. It deletes the category for peddlers with horses or other animals because no licenses are issued under that category, and it deletes the higher tax rate on nonresidents because the distinction in tax rates between residents and nonresidents violates the commerce clause of the United States Constitution. In addition, the proposal makes clear that a peddler of farm products pays a single \$25.00 tax instead of \$25.00 for each county in which he peddles the products.

Unlike the provisions on peddlers, the wording of the provisions in the proposal on itinerant merchants and flea market operators are quite similar to those in the current statute. The main difference between the current statute and the proposal in this regard is organization. The proposal separates the provisions on itinerant merchants and flea market operators into

subsections (b) and (c), respectively; whereas, the statute includes them in the same subsection. In addition, the proposal deletes a provision in the current law that authorizes the Department of Revenue or a city or county to require a merchant who begins doing business to deposit \$100.00 or post a bond of \$100.00 to cover the itinerant merchant privilege tax that is payable if the merchant turns out to be an itinerant. This authority is not used by the Department or cities and counties and is not considered necessary to administer the tax. The proposal carries forward the \$100.00 per county tax applicable to itinerant merchants and flea market operators.

In addition to reorganizing the provisions of the current statute applicable to the three types of merchants taxed by the statute, the proposal gathers all the exemptions to the taxes levied by the statute into subsection (d) and condenses the provisions authorizing cities and counties to levy taxes on peddlers, itinerant merchants, and flea market operators into a single statement in subsection (f). Although the rationale for some of the exemptions to the statute is not clear, the committee preserved the exemptions in the current statute because its purpose in rewriting G.S. 105-53 was not to change the law but to make it clearer. The proposal deletes the provision in the current statute authorizing counties and cities to exempt blind persons from local privilege license taxes levied under that statute because the blind are exempted from all privilege license taxes by G.S. 105-249. It also deletes the provision authorizing counties and cities to exempt disabled soldiers because it is not

used and is not considered necessary. Similarly, the proposal deletes the authorization to cities and counties to establish a graduated tax scale for peddlers based on the weight of their vehicle because it is not used.

Finally, the proposal adds a definition of "person" to avoid repeating "person, firm, or corporation" numerous times and repeals two old local acts rendered obsolete by the proposal. Chapters 632 and 923 of the 1955 Session Laws authorize Hyde and Gates Counties, respectively, to levy a minimum tax of \$100.00 instead of \$25.00 if they adopt the graduated scale referred to above. Because the proposal deletes the authorization for a graduated scale, the local acts no longer have any application.

LEGISLATIVE PROPOSAL 2

A BILL TO BE ENTITLED
AN ACT REGULATING ITINERANT MERCHANTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is amended by adding a new section to read:

"§ 66-67.1. Regulation of itinerant merchants.--(a)

Definition. An "itinerant merchant" is a merchant who:

- (1) sells or offers to sell goods at retail by peddling the goods from place to place; or
- (2) sells or offers to sell at retail goods transported to a location other than a building that is continuously used as a retail store.

(b) Registration and Fee. Before selling goods or offering goods for sale in a county, an itinerant merchant shall register with the appropriate local law-enforcement agency. If the places or location at which the goods are to be sold or offered for sale is within the corporate limits of a city, the merchant shall register with the police department of that city. Otherwise, the merchant shall register with the sheriff's office of the county in which the places or location is located. A merchant who peddles goods in both a city and the county in which the city is located shall register with both the city and county. A merchant shall register with the appropriate local law-enforcement agency each time he sells goods or offers goods for sale at a time or at

places or a location not listed in a registration report made under this section. A merchant who sells goods or offers goods for sale at the same places or location for more than twelve months shall re-register under this section at the end of each twelve-month period. When registering with a local law-enforcement agency, the merchant shall pay a registration fee of ten dollars (\$10.00), to be retained by the agency.

(c) Information. When a merchant registers with a local law-enforcement agency, the merchant shall report the following information:

- (1) The merchant's name and permanent address;
- (2) The merchant's retail sales tax license number and the number of any privilege license the State or locality requires of the merchant;
- (3) The name of the person, if any, on whose behalf the merchant is selling the goods and the merchant's relationship to that person, such as employee or agent;
- (4) The location where the merchant intends to sell or offer the goods for sale, or, if the merchant intends to peddle the goods, the general area in which the merchant intends to sell or offer the goods for sale;
- (5) If the merchant intends to sell or offer the goods for sale at a location, the name of the owner or lessee of the location and a statement signed by the owner or lessee giving the owner's or

lessee's permission for the merchant to sell or offer goods for sale there;

- (6) The type of goods to be sold or offered for sale and, if requested by the registering law-enforcement officer, invoices or receipts evidencing the source of the goods; and
- (7) The length of time the merchant intends to sell or offer goods for sale at a location, or, if the merchant intends to peddle the goods, the length of time the merchant intends to peddle goods in the city or county.

In providing a name and permanent address, a merchant who is incorporated shall give the name of the registered agent of the corporation and the address of the registered office of the corporation, as filed with the Secretary of State.

(d) Exemptions. This section does not apply to the following:

- (1) A merchant who sells farm or nursery products produced by him;
- (2) A merchant who would otherwise be required to register under this section and who locates at a farmers market, if the operator of the market complies with this section;
- (3) A merchant who is part of a group of five or more merchants who are selling goods either in the enclosed mall area or the parking lot of a shopping center at the invitation of the center;

- (4) A merchant who is part of a group of five or more merchants who are selling goods at a trade show at the invitation of the promoter of the trade show;
- (5) A merchant who is a nonprofit charitable, educational, religious, scientific, or civic organization; or
- (6) A merchant who sells his own household personal property.

(e) Penalty. A person who fails to register with a local law-enforcement agency as required by this section or who knowingly gives false information to a registering law-enforcement officer when registering under this section is guilty of a misdemeanor and is punishable by imprisonment for up to 30 days, a fine of up to two hundred dollars (\$200.00), or both.

(f) Local Regulation Unaffected. This section does not affect the authority of a county or city to impose additional requirements on itinerant merchants by an ordinance adopted under G.S. 153A-125 or G.S. 160A-178."

Sec. 2. This act shall become effective January 1, 1988.

EXPLANATION OF LEGISLATIVE PROPOSAL 2

Proposal 2 imposes new regulatory requirements on itinerant merchants. It requires these merchants, who are defined as peddlers and other persons who sell goods at a place other than a permanent retail store, to register with a local law-enforcement agency before selling their goods and to report certain information about themselves and the goods they have for sale. In addition, it requires an itinerant merchant to pay a fee of \$10.00 when registering with a local law-enforcement agency and makes it a misdemeanor punishable by imprisonment for up to 30 days, a fine of up to \$200, or both, for an itinerant merchant to fail to register or to knowingly give false information when registering. The proposal, therefore, provides a means of keeping law-enforcement agencies apprised of itinerant merchants in their communities, ensures that itinerant merchants will obtain the necessary licenses, and protects against itinerant merchants who sell stolen goods or misrepresented goods.

The law-enforcement agency with which an itinerant merchant must register depends on where the merchant intends to sell goods. If the merchant intends to sell the goods at a vacant lot, for example, in a city, the merchant must register with the police department of that city. If, however, he intends to sell goods at a vacant lot outside the city, he must register with the sheriff's office of the county in which the lot is located. Obviously, the distinction in registering with the police

department or the sheriff's office parallels the jurisdiction of the city and county law-enforcement officers. The proposal requires an itinerant merchant to register with the law-enforcement agency most likely to pursue any violation of law by the merchant.

A merchant is required to register each time he sells goods at places or a location that he has not previously reported to the law-enforcement agency. Thus, there is no registration period corresponding to a calendar year or a fiscal year. If, however, a merchant sells goods at the same location on the same day of each month, for example, and has reported this schedule when registering initially with the law-enforcement agency, the merchant does not have to register with that agency again until twelve months have elapsed since the time he initially registered. Conversely, a merchant who sells furniture at one location for a few days and, the next week or month, sells furniture at the same or a different location that he did not report the first time he registered with the proper law-enforcement agency must register again before making the subsequent sale of furniture.

When registering with the law-enforcement agency, the itinerant merchant must pay a \$10.00 fee and must provide certain information. Ten dollars was selected as the amount of the fee because ten dollars is the amount of the fee for filing articles of incorporation with the Secretary of State, and the committee considered registering with a law-enforcement agency akin to registering with the Secretary of State. The information that

must be provided is information identifying the merchant, the merchant's expected sales activities in the city or county, and the type of goods sold by the merchant. Most importantly, the proposal requires an itinerant merchant who intends to sell goods at specific locations, as opposed to peddling the goods, to report the name of the owner or lessee of the property where the merchant intends to sell his goods and give evidence that the owner or lessee has agreed to allow the merchant to sell his goods there. Significantly, the proposal also requires the merchant to show receipts or invoices for the goods he intends to sell indicating where he got the goods if requested to do so by a law-enforcement officer who registers the merchant.

The proposal has several general exemptions designed to exclude from its scope those itinerant merchants who sell goods under circumstances in which some other entity is exercising a regulatory influence, such as at a trade show or shopping mall when the merchant has been invited to sell his goods there, or under circumstances that do not warrant regulation, such as when a farmer sells farm products grown by him or a nonprofit organization sells goods. Also, to exclude persons who sell goods in yard sales, the proposal exempts a person who sells his own household personal property. If a person purchases goods for resale and sells them in his yard, he obviously is not excluded from the registration requirement of this section unless he falls into another category of exemption because he is not selling his own household personal property. Only a person who sells his own

household personal property, either in his own yard or at another location such as a flea market, is covered by this exemption.

Finally, the proposal makes it clear that cities and counties may impose additional requirements on itinerant merchants by an ordinance adopted under G.S. 153A-125 or G.S. 160A-178. The Town of Selma, for example, requires itinerant merchants to post a \$1,000 bond. This proposal would have no effect on that requirement.

GENERAL ASSEMBLY OF NORTH CAROLINA
 SESSION 1985
 RATIFIED BILL

CHAPTER 790
 SENATE BILL 636

AN ACT AUTHORIZING STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, MAKING TECHNICAL AMENDMENTS THERETO, AND TO MAKE OTHER AMENDMENTS.

The General Assembly of North Carolina enacts:

- Section 1. Studies Authorized. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1985 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:
- (1) Continuation of the Study of Revenue Laws (H.J.R. 17-Lilley),
 - (2) Continuation of the Study of Water Pollution Control (H.J.R. 141-Evans),
 - (3) Adolescent Sexuality Teaching (H.J.R. 275-Jerals),
 - (4) Continuation of the Study on the Problems of the Aging (H.J.R. 322-Greenwood),
 - (5) Continuation of the Study of Municipal Incorporations (H. J. R. 389-Greenwood),
 - (6) School Discipline (H.J.R. 861-Colton),
 - (7) Bail Bondsmen and Bail Bond Forfeiture (H. B. 967-Watkins),
 - (8) Preventative Medicine (H.B. 1052-Locks),
 - (9) Life Care Arrangements (H. B. 1053-Locks),
 - (10) State Personnel System (H.B. 1064-Wiser),
 - (11) Long-Term Health Care Insurance (H.B. 1103-Locks),
 - (12) Itinerant Merchants (H. B. 1170-Lancaster),
 - (13) Manufactured Housing Zoning (H. B. 1178-Ballance; S. B. 636-Plyler),
 - (14) Interest Rate Regulation (H.J.R. 1227-Evans),
 - (15) Underground Storage Tank Leakage Hazards and other ground water hazards (H. B. 1281-Locks),
 - (16) Mental Patient Commitments (H.J.R. 1313-Miller),
 - (17) High-Level Radioactive Waste Disposal (H. B. 1373-Diamont; S.B. 655-Hipps),
 - (18) Stun Guns (H. J. R. 1390-McDowell),
 - (19) Continuation of the Study of Water Quality in Haw River and B. Everett Jordan Reservoir (H. J. R. 1393-Hackney),
 - (20) Authority of Boards of County Commissioners in Certain Counties over Commissions, Boards and Agencies (H.J.R. 1405-Holroyd),
 - (21) Superintendent of Public Instruction and State Board of Education (H. J. R. 1412-Nye),
 - (22) Rental Referral Agencies (H. B. 1421-Staney),
 - (23) Child Abuse Testimony Study (S. B. 165-Hipps),
 - (24) Home Schooling Programs (S. J. B. 224-Winner),
 - (25) Pretrial Release (S. J. R. 297-Winner),

- (26) Inmate Substance Abuse Therapy Program (S.J.R. 317-Plyler),
- (27) Inmate Work-Release Centers (S.B. 406-Swain),
- (28) Community College System (S.B. 425-Martin),
- (29) Community Service Alternative Punishment and Restitution (S.B. 495-Swain),
- (30) State Employee Salaries and Benefits (S.B. 514-Jordan),
- (31) State Infrastructure Needs (S.B. 541-Royall),
- (32) Commercial Laboratory Water Testing (S.B. 573-Taft),
- (33) Outdoor Advertising (S.B. 611-Thomas, R.P.),
- (34) Premium Tax Rate on Insurance Companies (S.B. 633-Hardison)
- (35) Continuation of the Study of Child Support (S.B. 638-Marvin),
- (36) Local Government Financing (S.B. 670-Rauch),
- (37) Medical Malpractice and Liability (S.B. 703-Taft),
- (38) Marketing of Perishable Food (S.B. 718-Basnight),
- (39) Child Protection (S.B. 802-Hipps),
- (40) Legislative Ethics and Lobbying (S.B. 829-Rauch),
- (41) Satellite Courts (S.B. 850-Barnes),
- (42) Substantive Legislation in Appropriations Bills (S.B. 851-Band),
- (43) School Finance Act (S.B. 848-Taft).

Sec. 2. Transportation Problems at Public Facilities. The Legislative Research Commission may identify and study transportation problems at public transportation facilities in North Carolina.

Sec. 2.1. The Legislative Research Commission may study the feasibility of the prohibition of investment by the State Treasurer of stocks of the retirement systems listed in G.S. 147-69.2(b)(6), or of the assets of the trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1 and G.S. 147-69.2(19) in a financial institution that has outstanding loans to the Republic of South Africa or in stocks, securities, or other obligations of a company doing business in or with the Republic of South Africa.

Sec. 3. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1987 General Assembly, or the Commission may make an interim report to the 1986 Session and a final report to the 1987 General Assembly.

Sec. 4. Bills and Resolution References. The listing of the original bill or resolution in this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 5. The last sentence of G.S. 120-19.4(b) is amended by deleting the citation "G.S. 5-4" and inserting in lieu thereof the following: "G.S. 5A-12 or G.S. 5A-21, whichever is applicable".

Sec. 6. G.S. 120-99 is amended by adding a new paragraph to read:

"The provisions of G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that the chairman shall sign all subpoenas on behalf of the Committee.

Sec. 7. G.S. 120-30.17 is amended by adding a new subsection to read:

"(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it."

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 18th day of July, 1985.

ROBERT B. JORDAN III

Robert B. Jordan III
President of the Senate

LISTON B. RAMSEY

Liston B. Ramsey
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1985

HOUSE JOINT RESOLUTION 1170
Committee Substitute Favorable 6/19/85

Sponsors: Representative

Referred to: Appropriations.

May 16, 1985

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH
2 COMMISSION TO STUDY THE REGULATION OF ITINERANT MERCHANTS.

3 Be it resolved by the House of Representatives, the Senate
4 concurring:

5 Section 1. The Legislative Research Commission may
6 study the regulation of itinerant merchants to determine whether
7 the current laws regulating these merchants are adequate to
8 ensure the proper collection of taxes payable by these merchants
9 and to protect consumers who purchase goods from these merchants.
10 As part of its study, the Commission may consider whether these
11 merchants should be required to post a bond to cover potential
12 tax liabilities and to provide recourse to consumers who have
13 causes of action against the merchants.

14 Sec. 2. The Commission shall report its findings and
15 recommendations to the 1987 General Assembly. The report shall
16 include any recommended legislation needed to implement the
17 Commission's recommendations.

18 Sec. 3. This resolution is effective upon ratification.

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APPENDIX B

ITINERANT MERCHANTS STUDY COMMITTEE

1985-86

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Cochairman
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Rep. Sam Hunt
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Legislative Research Commission member responsible for study:
Representative John Church

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October 22, 1986

MEMORANDUM

TO: Members of the Itinerant Merchants Study Committee

FROM: Sabra Faires, Committee Counsel

SUBJECT: Current Law on Itinerant Merchants

Current law generally treats itinerant merchants the same as other types of merchants. It does, however, permit local governments to regulate these merchants and it requires itinerant merchants who sell consumer goods at a price greater than \$25.00 to provide certain information to the buyer of the goods. As implied by the term, an itinerant merchant is a merchant who travels with his stock of goods and sells his goods by peddling them door-to-door, by vending them on a street corner, a vacant lot, or any other available space, or by displaying the goods temporarily in a building.

As retail merchants, the general laws affecting retail merchants apply to itinerant merchants. As it requires of everyone engaged in the business of selling tangible personal property at retail, G.S. 105-164.4(7) requires itinerant merchants to purchase a one-time, \$5.00 retail sales tax license. Like all retailers, itinerant merchants must collect and remit State and local sales and use taxes and must, under G.S. 105-164.29, conspicuously display the license where they sell their goods.

To ensure compliance with the sales and use tax statutes by itinerant merchants who sell at flea markets, G.S. 105-164.4(4b) states specifically that an itinerant merchant who sells goods, other than his own household personal property, at a flea market is a retailer and must collect and remit sales and use taxes. It also imposes a duty on an operator of a flea market to check whether each itinerant merchant to whom the operator rents space at the market has obtained the required retail sales tax license and requires the operator to keep records of the merchants to whom he rents space at the market. This provision, however, does not treat itinerant merchants

differently from other merchants; it simply attempts to provide a means of applying the general sales tax law to certain itinerant merchants.

In addition to purchasing a sales tax license, as a person who is engaged in business, an itinerant merchant must obtain any applicable State privilege license for engaging in business. Article 2 of Chapter 105 of the General Statutes requires some, but not all businesses, to obtain annually a State privilege license and pay an annual tax for the license. Because the privilege license tax was a primary source of State revenue in the early 1900's, but ceased to be a significant source when income taxes and sales and use taxes were imposed, the businesses taxed by the privilege license statutes are primarily those prominent in the early 1900's. Considering the prevalence of peddling during that time, it is not surprising that peddlers and other itinerant merchants are among those required to obtain a privilege license.

Under G.S. 105-53, the statute imposing a privilege license tax on itinerant merchants, the applicable tax varies depending on how the itinerant merchant sells his goods and the number of counties in which the merchant operates. An itinerant merchant, for example, who peddles his goods door-to-door in three counties must pay an annual tax of \$75.00 (\$25.00 for each county), and an itinerant merchant who sells his goods by displaying them and offering them for sale at vacant lots must pay an annual tax of \$100.00 for each county in which he sells goods. A flea market operator is also required by G.S. 105-53 to pay an annual privilege license tax of \$100.00 for each county in which he operates. Not all itinerant merchants are subject to G.S. 105-53, however. Merchants who sell only certain products such as ice and printed music are exempt from the tax. Like all persons required to have a State privilege license to engage in business, an itinerant merchant must, in accordance with G.S. 105-112, conspicuously post his privilege license where he conducts business.

In addition to imposing a State privilege license tax, G.S. 105-53 also authorizes counties and cities to impose local privilege licenses on itinerant merchants. It limits the amount of any local privilege license tax to the amount of the State tax, however. This type authorization and limitation are common features of the privilege license tax statutes.

Although itinerant merchants are required to purchase a privilege license under G.S. 105-53 to engage in business, they may also be required to purchase other privilege licenses depending on the type of goods they sell. An itinerant merchant who sells bicycles, for example, must purchase an annual privilege license under G.S. 105-49. This requirement of purchasing more than one privilege license is not unique to itinerant merchants, however. Merchants with a fixed retail establishment must likewise purchase more than one privilege

license if they sell more than one type of good for which a privilege license is required.

Unlike itinerant merchants, however, retail merchants with a fixed retail establishment are not required to purchase a privilege license to sell goods not covered in other privilege license tax statutes. If they operate more than one store, however, they must purchase a chain store privilege license tax in accordance with G.S. 105-98 and, because of the variety of products they sell, are more likely than itinerants to have to purchase several privilege licenses to sell the various products.

In addition to general tax laws, itinerant merchants are affected by the general law on unfair trade practices. Like anyone who sells goods, an itinerant merchant is prohibited by G.S. 75-1.1 from misrepresenting the quality of the goods sold and advertising the goods in a deceptive manner.

The only statutes that regulate itinerant merchants are G.S. 153A-125, 160A-178, and 14-401.13. The first two of these statutes do not themselves regulate itinerant merchants but authorize counties and cities, respectively, to pass ordinances regulating itinerant merchants. These statutes give local governments broad authority to regulate itinerant merchants. Under that authority a city, for example, can require an itinerant merchant to register with the city, provide detailed information about himself and the goods he intends to sell, and post a bond with the city before selling goods in that city.

The remaining statute, G.S. 14-401.13, regulates only one aspect of a transaction between an itinerant merchant and a consumer. It requires an itinerant merchant who sells a consumer good at a price greater than \$25.00 to give the buyer both a receipt showing the merchant's name and address and a notice of cancellation informing the buyer that the buyer has the right to return the goods he purchased within three days and have his money returned. Failure to give the buyer a receipt and notice of cancellation is a misdemeanor punishable by imprisonment for 30 days and a fine of \$100.00.

APPENDIX D

Speakers at Committee Meetings

NAME

Bob Adams, Promoter of Antiques Extravanganza, Winston-Salem
Vaughn Adams, Nowell's Furniture Company, Cary
Clarence Bell, Itinerant Merchant at Raleigh Flea Market
Tammy Crowder, Eckerd's, Raleigh
Bill Hartman, Southern Home Furniture Association, High Point
Hal Johnson, N.C. Christmas Tree Growers Association, Lansing
Bill Kimbrell, Christian-Howard Furniture, Durham
J. C. Knowles, Itinerant Merchant, Raleigh
Charles Krumbein, Heilig-Myers Furniture, Richmond, Virginia
Walter Markovsky, Itinerant Merchant at Raleigh Flea Market
Fred Retchin, Furniture City, Wilmington
William Robinson, Itinerant Merchant from Garysburg
Lynne Royall, President of N.C. Ass'n. of Dealers in Antiques
William C. Rustin, Jr., N.C. Retail Merchants Association
Barbara Shaw, Consumer Protection Division, Attorney General's
Office
Sherrill Shaw, Shaw Furniture Galleries, Randleman
Vicki Spencer, Eckerd's, Raleigh
Bill Wilder, Wilder's Nursery, Knightdale
Michael Williams, Itinerant Merchant at Raleigh Flea Market
Patricia Wiencken, Federal House Gallery, Cary
Jerry Young, Jolly's of North Hills, Raleigh

